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Divisional Applications

This fact sheet provides information on divisional applications and answers some commonly asked questions.

What is a divisional application?

The principal purpose of a divisional application is to protect your rights if you have described more than one invention in your complete specification. It allows you to divide out one of the inventions from your "parent" application into a new complete application without losing your priority rights.

Who can file a divisional application?

To file a divisional application, you must be the applicant for the parent application.

Why would I want to file a divisional application?

Usually you will only need to consider a divisional application if our examination report says your application claims more than one invention. You can choose to respond by deleting the claims to the additional invention or, if you still want patent protection for it, file a divisional application.

What conditions are there on filing divisional application?

1. You should use the IP Australia request forms P/ 00/ 001 (standard) or PI/ 00/ 004 (innovation) and must indicate, at [62], the parent (original) application number.

2. On the date you file your divisional application the parent application must not have lapsed, been refused, or been withdrawn.
3. You cannot divide out from a provisional application. You can achieve the same effect by filing a number of associated complete applications for each invention disclosed in the provisional.
4. If your parent application is a complete application for a standard patent:
 - You can file a divisional application for anything that was disclosed in the complete specification of the parent application when filed, so long as the divisional application is filed prior to, or no more than 3 months after, the date we publish the notice that your complete application has been accepted.
 - If you file a divisional application more than 3 months after this notice it must be restricted to an invention that was claimed in the complete specification when it was accepted.
 - You cannot file a divisional application after we seal the parent application.
 - You can file a divisional application as a standard or innovation patent.



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5. If your parent application is an innovation patent, you can file a divisional application as an innovation patent or a standard patent before grant of your parent application. Once your parent application is granted you can only file a divisional application as an innovation patent, and only during the period between requesting examination and 1 month after the certification of the patent is advertised.

What is the term of a divisional patent?

The maximum term of a patent granted on a divisional application is unaffected except that it is counted from the date of filing the parent application, rather than the date you filed the divisional application.

Do I have to maintain the parent application in order to maintain my divisional application?

No. The only requirement is that on the day you file your divisional application, your parent application must have had all its fees paid, and not have lapsed, been refused, or withdrawn. After you have filed a divisional application, it can continue by itself irrespective of what happens to the parent application.

What about maintenance fees?

Annual maintenance fees are generally due on each anniversary of the filing the parent application. The relevant anniversary date should be checked with IP Australia.

Is there any limit on the number of divisional applications from a parent application?

No. If the parent application discloses several inventions, you can have as many divisional applications as you need to obtain patent protection for all the inventions

disclosed.

Can a divisional application include and claim matter that was not described in the parent application?

Yes. Your divisional application can include any changes that you have made to the invention. However, if your application is to continue as a divisional application, the parent application must have disclosed all the features of at least one of the claims of the divisional.

Do I have to make sure that the invention of the divisional application has been completely excluded from the parent application?

No. You do not have to remove the invention from the parent application, so long as the parent application claims only one invention. If the parent application and the divisional application both claim the same invention we will grant a patent for only one of your applications.

When is a divisional application published?

Your divisional application is published on the same date as the parent application. If your parent application has already been published, your divisional application will be published immediately.

What is the priority date of the claims in a divisional application?

If all the subject matter of a claim in a divisional application was described in the parent application, the priority date of that claim is the same as the priority date that the claim would have had if it were still in the parent application.

If a claim includes subject matter that was not described in the parent, the priority date of that claim would normally be the date on



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which you filed the divisional application.

Seek Professional Advice

This sheet provides only basic information. Patent matters can involve complex legal issues and it may be in your best interests to consult a patent attorney, solicitor experienced in intellectual property matters, or your business adviser.

For a list of IP professionals, visit the IP Australia website www.ipaustralia.gov.au or search your local Yellow Pages Directory.

Disclaimer:

This information is intended to help the reader gain a basic understanding of some IP principles. It is not designed to provide legal, business or other relevant professional advice. IP Australia recommends that you seek independent legal, business or other relevant specialist advice.

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